

NEWS FROM ED MARKEY

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NRC COMMISSIONER: PUBLIC DISCLOSURE “A FOOL’S ERRAND”

Regulator Huddles With Nuclear Industry Behind Closed Doors While Public is Left in the Dark

Washington, DC: Representative Edward J. Markey (D-MA), a senior Member of the Homeland Security Committee and the House Energy and Commerce Committee, the panel which oversees the regulation of nuclear reactors, today released long-awaited correspondence from the Nuclear Regulatory Commission (NRC) regarding its ill-advised decision to allow force-on-force security exercises at nuclear power-plants to be conducted by the industry itself. With approval from the NRC, the Nuclear Energy Institute (NEI), the nuclear industry’s lobbying organization, has contracted for such tests of terror readiness to be conducted by the Wackenhut Corporation, which already has the contract to provide security at about half of the nation’s over 100 operating nuclear power-plants. The correspondence also addresses the decision by the NRC to bar public access to all security-related information, even information that is not classified. The NRC had been inappropriately withholding many of the documents associated with its November 22, 2004 letter to Rep. Markey’s October 12, 2004 letter from public release until late-June, 2005. This refusal on the part of the NRC to release documents that were not security-sensitive in part motivated Rep. Markey’s March 21, 2005 request to the NRC Inspector General to determine whether the Commission was inappropriately using secrecy designations to avoid public scrutiny of its activities (see http://www.house.gov/markey/Issues/iss_nuclear_ltr050321.pdf).

“I can think of nothing more damaging to public confidence in the nuclear industry than regulators that deem it a ‘fool’s errand’ to provide the public with unclassified information regarding security at the plants. Families live near these Al Qaeda targets, yet the documents finally released by the NRC indicate that all too often, the Commission has chosen to avoid inconvenient or embarrassing public scrutiny of its activities rather than protect the public,” said Rep. Markey. “In its response to my letter, the Commission chose not to respond to questions regarding the potential conflict-of-interest posed by the decision to allow NEI to hire Wackenhut. The materials indicate that at least some of the Commission’s motivation to withhold unclassified security-related information from the public was the concern that pesky Members of Congress, the public and the press might seek additional information about Commission activities. I am disappointed -- but not surprised.”

Rep. Markey first sent a letter to the NRC on August 23, 2004 (see http://www.house.gov/markey/Issues/iss_nuclear_ltr040823.pdf) in response to reports that the NEI hired Wackenhut Corporation to act as a mock terrorist force in force-on-force (FOF) tests at nuclear reactors. Since Wackenhut also provides security services for half of the nation’s nuclear power plants (including Seabrook, Pilgrim and Vermont Yankee), using Wackenhut to test security represents a clear conflict-of-interest. More fundamentally, given NEI’s self-described role as an advocate and promoter of nuclear power and the fact that NEI is the principal trade association representing the nuclear utilities industry, Rep. Markey has long pointed out that it is inappropriate for NEI to be involved in assessing the adequacy of security of its member companies. Rep. Markey sent a follow-up letter to the NRC on October 12, 2004, both to follow up on the NRC’s response to the August correspondence (see http://www.house.gov/markey/Issues/iss_nuclear_resp041001.pdf) as well as reports that the NRC announced that it will no longer provide any information related to assessing security at nuclear reactors to the public. On November 22, 2004, the Commission provided a response to Rep. Markey’s letter, but refused to allow Rep. Markey to release most of the information provided even though it was not classified for national security reasons. It took seven months for Rep. Markey’s office to succeed in prying these documents loose.

The materials released by the NRC indicate:

- The NRC approved a new policy on March 29, 2004 that would withhold all security-related information from the public and would close security-related meetings of the Commission to all but the nuclear industry even when the information in question was unclassified. Commission voting records (see Attachment F4) indicate that while NRC staff recommended a more flexible policy on releasing non-safeguards security information to the public, the Commission rejected the staff's recommendations in favor of a much more restrictive policy. At least some of the Commission's objections appear to stem from a concern that it might be costly and time-consuming to provide this information to the public. For example, in his comments explaining why he rejected the staff's recommendation, Commissioner McGaffigan states that the staff recommendation would have required more, not less staff time because when the security-related information was posted, "the staff will be pressed to reveal more information and to assure the public that despite these [security] deficiencies, the plant should not be shut down. Congressmen will feel compelled to write letters. Reporters will feel compelled to seek safeguards information. This will be a fool's errand, carried out time and time again, consuming staff and Commission resources in large quantities. By comparison, Option 5's closed system will consume far fewer resources."
- In response to the Congressman's question about whether the NRC could have legally entered into a contract with Wackenhut for purposes of Wackenhut serving as the mock terrorist team, the NRC declined to even respond, stating that "it would be unproductive and inappropriate for us to speculate on what, among other issues, the possible outcome of a conflict-of-interest determination could have been..." Although it is relying in part on the NEI-Wackenhut contract to test the vulnerability of nuclear power-plants to terrorist attack, it is apparent that the NRC has no interest in examining whether it would have been legally authorized to enter into a similar contract with Wackenhut itself.
- The NRC staff, in a December 3, 2003 memo regarding the use of reactor licensee mock terrorist teams, stated that there were "recurring examples where individual adversaries or adversary teams did not adequately execute offensive tactics or mission elements that would have been expected of a credible, well-trained adversary team and did not provide a realistic and credible challenge to the site physical protection plan." Nevertheless, the staff memo went on to suggest that the mock exercises should be done by the lobbying group that represents the nuclear reactor licensees – instead of the NRC itself -- even though the staff found that having an NRC or other government-run mock terrorist team would develop a "highly credible" mock terrorist force.
- While individual reactor sites would only be informed 8-12 weeks in advance of a force-on-force exercise, NEI would be informed at least 6 months in advance "to facilitate planning and logistical support" for the exercise. This raises additional questions regarding the advisability of the nuclear industry's role in these activities, since it is possible that this information will leak either from NEI or from Wackenhut to the individual reactor licensees, thereby severely reducing the value of the exercises.
- The "Final Report on the Transitional Force-on-Force Exercise Program" (Attachment D) dated September 28, 2004 indicates that NRC staff plans to meet periodically with NEI to improve the force-on-force program, "including alignment between the staff and the industry. The staff intends to continue its efforts to endorse acceptable industry guidance documents as warranted." The document also cites numerous meetings and plans for future meetings between the NRC and industry stakeholders, but leaves out any mention of meetings with non-industry stakeholders such as independent nuclear security experts.

For the materials released by the Nuclear Regulatory Commission (NRC) or more information regarding the Rep. Markey's work in the area of nuclear reactor security, please see www.house.gov/markey.

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